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IN THE

SUPREME COURT OF THE UNITED STATES

FALL TERM 1971

No. 71-616

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 12 AND STERLING DENNIS,

Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO,

Respondent,

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC., AND THE DALEY CORPORATION,

Real Parties in Interest.

---

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 12 AND ERNEST HEINRICH,

Petitioners,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO,

Respondent,

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, SAN DIEGO CHAPTER, INC. AND CAMERON BROTHERS CONSTRUCTION CO., INC.,

Real Parties in Interest

Petition for a Writ of Certiorari to the Superior Court of the State of California for the County of San Diego.

BRIEF FOR REAL PARTIES IN INTEREST IN OPPOSITION

OPINION BELOW

The judgments and orders of the Superior Court of the State of California for the County of San Diego (Pet. App. 23-25, 28-30) are unreported, as are the orders of the Fourth District Court of Appeal of the State of California denying petitioners' Petitions for Writs of Certiorari (Pet. App. 26, 31) and of the Supreme Court of the State of California denying petitioners' Petitions for Hearing (Pet. App. 27, 32). No opinion was rendered by either the Court of Appeal or the Supreme Court.

JURISDICTION

The orders of the Supreme Court of the State of California denying the Petitions for Hearings were entered on August 4, 1971 (Pet. App. 27, 32).

QUESTION PRESENTED

Petitioner Union and its agents, including its business agents, petitioners Dennis and Heinrich, engaged in picketing of construction sites where real parties in interest Daley Corporation (hereafter "Daley") and Cameron Brothers Construction Company, Inc. (hereafter "Cameron") were performing construction contracts, which picketing caused strikes by the employees of Daley and Cameron. Both Daley and Cameron employed only members of the petitioner Union, pursuant to a collective bargaining agreement which contained no-strike, arbitration and union security clauses.

There was no dispute between the Union and Daley or

Cameron. The Union had filed no grievance or otherwise sought to invoke the arbitral procedure of the parties' collective bargaining agreement.

The question presented is whether the California Superior Court correctly determined that it had jurisdiction to compel the Union to comply with the no-strike and arbitration obligations of the collective bargaining agreement.

STATUTES INVOLVED

Petitioners assert that:

> "The statutory provisions principally involved are the pertinent provisions of the 14th Amendment (Due Process Clause) and Article 6, Clause 2 (Federal Supremacy Clause) of the United States Constitution." (Pet. 4.)

Petitioners further state that the questions raised in their petition were first submitted to the Superior Court in petitioners' Points and Authorities and were "again urged upon the Court of Appeal and the California Supreme Court" in their Petition for Writ of Certiorari (Pet. 4). Such statement is inaccurate.

No specific reference is made in any of the documents filed in the trial, appellate or Supreme courts of California to either of the Constitutional provisions upon which petitioners now rely. Passing references to "due process" (whether under federal or state constitutional provisions is unspecified) are the closest which can be found in any of the state court pleadings and briefs.

More importantly, petitioners failed to in any way raise the "due process" point in the Superior Court that the declarations (affidavits) were not technically offered or received in evidence

(Pet. 15), thus denying the trial judge the opportunity to correct that minor procedural error, if such it be.

Petitioners having failed to comply with the mandate of Supreme Court Rule 23(1)(f), real parties in interest hereby object to the jurisdiction of this Court, pursuant to Supreme Court Rule 24(2).

STATEMENT

The petition states that no proof was offered "of Union involvement with, or control of said employees [of Daley and Cameron] at the time the alleged violations occurred" (Pet. 7). That is inaccurate. In each of the cases, declarations of responsible officers or employees of the employer showed that its entire work force at the site in question were members of petitioner Union (C. R. Declaration of Charles H. Hill, Jr., 6:14-15, filed January 28, 1971 (hereafter "Hill declaration"); Declaration of Ralph T. Richey, 2:27-3:3, filed January 28, 1971; Declaration of John Cameron, 2:29-3:2, filed February 1, 1971).

Also inaccurate is the statement that the real parties in interest "alleged in substance that a secondary boycott existed" (Pet. 5). To the contrary, each petition alleged that "Defendants [Union and fictitiously named defendants] have called, engaged in, sanctioned, and assisted in a strike against [real party in interest]" (C. R. Petition to Compel Arbitration and Complaint for Injunction Pending Arbitration, January 28, 1971, p. 4:22-23; same, February 1, 1971, p. 4:23-24). And counsel for the real parties in interest expressly controverted petitioners' counsel's arguments before the trial court that a claim of secondary boy-

cott was asserted (C. R. Reporter's Transcript, 7:6-8:13, 12:1-13:6, 15:19-16:19).

The relevant facts are that the Union was engaged in a dispute with Southern California Testing Laboratories, Inc. (hereafter "SCTL"), a subcontractor just as Daley and Cameron were subcontractors on the same construction sites (C. R. Hill declaration, 2:3-8; Declaration of Barry J. Smith, 1:31-2:4, filed February 1, 1971). There was no contractual relationship between Daley or Cameron and SCTL.

All of the employees of Daley and Cameron responded in a body to the picket lines of their own labor organization, petitioner Union, on each of the several times that petitioner's pickets appeared at the construction sites during the pendency of the temporary restraining order. (C. R. Declaration of Donald L. Jellison, filed February 1, 1971, and Exhibits B, C and D thereto; Supplemental Declaration of Charles H. Hill, Jr., filed February 5, 1971; Supplemental Declaration of John Cameron, filed February 4, 1971.) On the occasions when the picket lines were mounted prior to the employees' entering the job sites, they refused to enter; on the occasions when the pickets appeared after the men were at work, they stopped their labor and left the job sites.

The petitioner Union and the employers agree that no labor dispute existed between them (Pet. 5). The arbitral body established pursuant to the provisions of the collective bargaining agreement (composed of both labor and management representatives) found that the Union's activities constituted strikes against Daley and Cameron, respectively, in violation of the no-strike obligation of that agreement (C. R. Declaration of Glenn Dowdy, February 16, 1971). The Superior Court reached the identical

conclusion, based upon declarations submitted by both the employers and the Union[1] (C. R. Reporter's Transcript, 66:3-69:2.)

ARGUMENT

The Superior Court was clearly correct in its determination of its jurisdiction to enjoin the Union's breach of its no-strike and arbitration obligations, and the Court of Appeal and the Supreme Court of California were clearly correct in refusing to review the trial court's action.

There is no conflict between the action of the trial court and the decisions of this Court and of the California Supreme Court. The trial court properly relied upon *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970) and *McCarroll* v. *Los Angeles County District Council of Carpenters*, 49 Cal. 2d 45 (1957), in determining that it had jurisdiction to both enter the temporary restraining orders and punish the petitioners for their contempt of those orders.

While some questions in the field of labor law may not yet have been precisely answered by the courts, there can be no doubt of the answer to the one raised by this petition. As the Court stated in its *Boys Market* decision, *supra:*

> "[W]e agree with Chief Justice Traynor of the California Supreme Court that 'whether or not Congress could deprive state courts of the power to give such [injunctive] remedies

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[1] "Strike" is defined in the Labor Management Relations Act as including "any . . . concerted stoppage of work by employees . . . and any concerted slow-down or other concerted interruption of operations by employees," 29 U.S.C. 142(2). The determination of the existence of a "strike" is clearly one of fact.

when enforcing collective bargaining agreements, it has not attempted to do so either in the Norris-La Guardia Act or section 301.' " 398 U.S. at 247.

The other questions raised by petitioners seek review by this Court of the trial court's factual determinations, which review has already been considered and refused by both the intermediate and final appellate courts of California.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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